

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Federal-State Joint Board)	
on Universal Service)	CC Docket No. 96-45
)	
TRACFONE WIRELESS, INC.)	
)	
Petitions for Designation as an)	
Eligible Telecommunications Carrier)	
In the States of Florida and New York and)	
In the Commonwealth of Virginia)	

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (TDS Telecom)¹ submits these comments to oppose any change to the Commission's universal service rules that would permit a competitive carrier to recover universal service support for only Lifeline and Link-Up services pursuant to an alternative standard for designation as an eligible telecommunications carrier (ETC). The Commission should not undertake such a change – with its attendant administrative complexity and potentially substantial overall impact on the size of the Universal Service Fund – at a time when the Commission is already considering potentially dramatic changes to the universal

¹ TDS Telecom is a holding company operating 112 incumbent local exchange carrier (ILEC) subsidiaries serving primarily small and rural communities. TDS Telecom's ILEC subsidiaries serve over 700,000 local access lines in small and rural communities. The TDS ILECs take very seriously their commitment to provide high-quality telecommunications services at affordable rates throughout their service areas. Indeed, in respected third-party surveys subscribers have rated TDS Telecom at levels higher than customers of almost every other telephone company on all dimensions, from overall satisfaction to friendliness of employees to reliability of service. But the ability of the TDS ILECs to provide this level of service to their rural customers depends in most cases on the TDS ILECs' receiving substantial support from the Universal Service Fund. Accordingly, TDS Telecom has a strong interest in ensuring that the Fund remains viable and that its resources are used for the purposes Congress intended.

service system to prevent excessive growth in the Fund.² Moreover, the requested change is not necessary at this time to ensure that low-income consumers have access to Lifeline services. ETCs currently are required to make Lifeline services available to eligible subscribers, and the Commission has recently adopted guidelines designed to improve outreach and expand participation in existing Lifeline programs.³

BACKGROUND

These comments are filed in response to the Public Notice seeking comment on the AT&T Petition for Limited Reconsideration of the Commission's *Lifeline/Link-Up Order* and the TracFone Wireless Petitions for ETC Designation in Florida, New York, and Virginia seeking universal service support for a prepaid wireless Lifeline service.⁴ The AT&T Petition asks the Commission to "bifurcate" the ETC designation process to permit carriers who satisfy a "basic statutory requirement" of providing Lifeline and Link-Up service to income eligible subscribers to recover universal service support for such services (Low Income Support) without having to satisfy additional federal or state requirements that apply to the recovery of High-Cost universal service support (High-Cost Support).⁵ Specifically, the AT&T Petition urges the Commission to grant ETC designation to *all* carriers who *either* agree to provide supported Lifeline service to eligible subscribers under the federal rules *or* qualify for state Lifeline

² See Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC/Primary Line NPRM*) (seeking comment on Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (*ETC/Primary Line Recommended Decision*)).

³ Report and Order and Further Notice of Proposed Rulemaking, *Lifeline and Link-Up*, WC Docket No. 03-109, FCC 04-87, at ¶¶ 44-49 (rel. Apr. 29, 2004) (*Lifeline/Link-Up Order*).

⁴ Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Support Mechanism*, CC Docket No. 96-45 and WC Docket No. 03-109 (rel. Aug. 30, 2004) (*Public Notice*).

⁵ Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109, at 4 (filed July 21, 2004) (AT&T Petition).

support. AT&T argues that such carriers should be able to recover federal Low Income Support automatically if they meet state Lifeline carrier eligibility criteria *or* they provide federally-defined supported services (but do not meet state requirements).⁶

In the TracFone Petitions, TracFone Wireless, Inc. (TracFone) seeks ETC designation throughout Florida, New York, and Virginia. TracFone contends that it meets the statutory and regulatory requirements for full ETC designation but will agree to a condition limiting the support it may receive to Lifeline support.⁷ Although TracFone claims that its ETC Petitions satisfy all requirements for ETC designation, it clearly believes that its Petitions for a “conditional” ETC designation limited to Lifeline support should be subject to a different public interest standard than a petition seeking ETC designation for both Low Income and High-Cost Support.⁸

Both the AT&T Petition and the TracFone ETC Petitions were filed against the backdrop of ongoing Commission proceedings triggered by concerns about the growing size of the Universal Service Fund. Among the proposals being considered to contain the growth of the

⁶ AT&T Petition at 7-8.

⁷ Petition, *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New York*, CC Docket No. 96-45 (filed June 8, 2004, modified by Reply Comments filed Aug. 9, 2004); Petition, *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Florida*, CC Docket No. 96-45 (filed July 21, 2004, as amended Aug. 16, 2004); Petition, *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45 (filed July 21, 2004, as amended Aug. 16, 2004) (collectively, the TracFone ETC Petitions). In connection with the ETC Petitions, TracFone has also filed a petition for forbearance from the requirement that ETCs provide supported services using their own facilities or a combination of their own facilities and resold services. Petition for Forbearance, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed June 8, 2004) (TracFone Forbearance Petition).

⁸ See Reply Comments of TracFone Wireless, Inc. on Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, at 1, 3 (Aug. 9, 2004) (TracFone NY Reply Comments) (instead of responding directly to public interest concerns raised by commenters opposing its initial petition for unconditional ETC designation in New York, arguing that its acceptance of a condition limiting its receipt of universal service support to Lifeline services “obviates all of the concerns raised in those comments”).

Fund are (1) the imposition of *additional* requirements on carriers seeking ETC designation, (2) a controversial “primary line” limitation on the scope of support designated ETCs could recover from the Fund, and (3) possible changes to the bases of support used to calculate universal service payments to both incumbent and competitive ETCs serving rural areas.⁹

DISCUSSION

The AT&T Petition expressly anticipates that bifurcation of the ETC designation process to permit Lifeline-only ETC designation would result in additional carriers’ seeking universal service support.¹⁰ For example, AT&T argues that carriers may not be interested in seeking High-Cost Support because of onerous state requirements on high-cost ETCs or because of the administrative burdens and expense associated with seeking such support.¹¹ AT&T argues that such carriers would seek Low Income Support from the federal Universal Service Fund if they could qualify for such support pursuant to a simplified process that (1) would automatically qualify carriers for federal Low Income Support if they meet state Lifeline eligibility criteria and (2) would allow carriers who do not meet “onerous” state Lifeline eligibility criteria to petition

⁹ See *ETC/Primary Line NPRM*; Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, FCC 04J-02 (rel. Aug. 16, 2004) (*Rural High-Cost Public Notice*). TDS Telecom has filed or anticipates filing comments in these pending proceedings.

¹⁰ The “conditional ETC designation” approach advocated in the TracFone ETC Petitions also presumably would open the door to additional carriers’ seeking ETC designation that otherwise would not be able to satisfy the public interest standard to receive High Cost Support in rural service areas. The impact would be even more significant if the Commission were also to grant TracFone’s Forbearance Petition and allow pure wireless resellers to recover support from the Universal Service Fund.

¹¹ AT&T Petition at 4, 6. Despite AT&T’s assertion that the *Lifeline/Link-Up Order* misunderstood or misconstrued AT&T’s initial proposal, the fact remains that AT&T sought, and the Commission rightly denied the request, to authorize carriers to receive Lifeline support where they are unable to satisfy all the statutory (and state regulatory) requirements for designation as an ETC. The Commission correctly concluded that Section 254(e) of the Communications Act permits payment of universal service support only to carriers that are designated as ETCs pursuant to Section 214(e) of the Act (which requires, *inter alia*, that ETCs provide all supported services throughout the designated service area), and that providing Low Income Support to carriers that fail to meet all the requirements for ETC designation under Section 214(e) could “serve as a disincentive for other carriers to comply with their ETC obligations.” *Lifeline/Link-Up Order* ¶ 54.

for certification to receive federal Low Income Support upon a showing that they provide supported Lifeline services within the federal definition.¹² AT&T has not attempted to quantify the number of carriers that might seek universal service support under such a mechanism.

Now is simply not the time for the Commission to consider *expanding* the class of carriers seeking support from the Universal Service Fund. Multiple pending proceedings in the Commission's universal service docket acknowledge that the Universal Service Fund is growing at an unsustainable rate and that changes in the universal service system may be necessary to control the size of the Fund. One widely-supported proposal would impose *additional* eligibility criteria on carriers seeking ETC designation.¹³ Against this backdrop, it would be inappropriate for the Commission to adopt contrary measures that would create an entirely new mechanism under which more carriers could seek ETC designation and universal service support.

No party proposing Lifeline-only ETC designation has been able to quantify the *overall* impact on the Fund of adopting the proposal. The impact is likely to be particularly substantial if a large number of wireless carriers (either facilities-based carriers or resellers like TracFone), who typically provide a service that complements rather than replaces traditional

¹² AT&T Petition at 7-8. TracFone claims that its ETC Petitions do not seek to be considered under a different ETC designation standard than a carrier seeking ETC designation to recover High-Cost Support. *See, e.g.*, TracFone NY Reply Comments at 3 n.4. Conversely, however, TracFone clearly believes, as noted above, that the imposition of a Lifeline-only condition on its ETC designation would alter the public interest analysis applied to its ETC Petitions.

¹³ *See ETC/Primary Line Recommended Decision* ¶¶ 21-48 (supporting imposition of additional minimum eligibility requirements and public interest factors for carriers seeking ETC designation); *ETC/Primary Line NPRM* ¶ 2 (seeking comment on the Joint Board's recommendations concerning the ETC designation process); *see also, e.g.*, Comments of the National Association of State Utility Consumer Advocates, CC Docket No. 96-45, at 34-40 (Aug. 6, 2004); Comments of the Public Utilities Commission of Oregon, CC Docket No. 96-45, at 3-5 (Aug. 6, 2004); Comments of the United States Telecommunications Association, CC Docket No. 96-45, at 8-11 (Aug. 6, 2004); Comments of the Rural Telecommunications Associations, CC Docket No. 96-45, at 35-36 (Aug. 6, 2004); Comments of the State Telecommunications Associations and Rural Telephone Companies, CC Docket No. 96-45, at 6-9 (Aug. 6, 2004); Comments of the National Exchange Carrier Association, CC Docket No. 96-45, at 18-20 (Aug. 6, 2004) (all expressing support for federal guidelines specifying additional ETC eligibility requirements).

wireline service, seek this type of Lifeline-only ETC designation. Under this scenario, it would become increasingly difficult and administratively complex, as more wireless carriers market Lifeline-supported wireless services, to enforce the requirement that eligible subscribers receive Lifeline support for only one line. This could result in the payment of duplicative Lifeline support for qualifying consumers. The Commission should not impose this additional burden on the Fund until the Commission has an opportunity to adopt appropriate measures to control the size of the Fund and to evaluate the success of those measures.

In addition to financial burdens, adopting AT&T's and TracFone's proposals to establish a Lifeline-only ETC designation process would also significantly complicate the administration of the Universal Service Fund. The Joint Board acknowledged this problem in rejecting AT&T's proposal, agreeing with an earlier Commission conclusion that "a single support mechanism with a single administrator following similar rules will have significant advantages in terms of administrative convenience and efficiency."¹⁴ Adopting the Lifeline-only ETC proposal, on the other hand, would introduce new administrative complexity into the processes of ETC designation and USF administration. At a minimum, the Fund administrator would need to maintain separate databases of carriers designated to receive separate types of universal service support and would need to develop a mechanism to try to prevent the type of double-recovery of Lifeline support described above.

It is unnecessary for the Commission to place these types of financial and administrative burdens on the Universal Service Fund to accomplish the goal of promoting the

¹⁴ See Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-2, at ¶ 61 (rel. Apr. 2, 2003) (*Lifeline/Link-Up Recommended Decision*) (citing Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8971 [¶ 369] (1997)).

provision of telecommunications services to low-income consumers. Because the Commission's Rules require all ETCs to provide Lifeline services,¹⁵ supported services are already widely available to eligible consumers from carriers that have satisfied the requirements for ETC designation (including wireless carriers). Although the percentage of eligible consumers participating in the available Lifeline programs may be low in some areas, the Commission has recently adopted outreach guidelines for states and carriers designed to increase participation in existing Lifeline programs.¹⁶ Prior experience has shown that such outreach efforts can significantly improve Lifeline participation rates (without the need to increase the number of carriers offering supported Lifeline services).¹⁷ Accordingly, there is no need to radically alter the ETC designation process – in a manner that could impose significant administrative and financial burdens on the Fund – to encourage consumers to take advantage of federally-supported Lifeline services.

¹⁵ See 47 C.F.R. § 54.405 (requiring all ETCs to make Lifeline service available and to publicize the availability of such services “in a manner reasonably designed to reach those likely to qualify for the service”).

¹⁶ *Lifeline/Link-Up Order* ¶¶ 44-49.

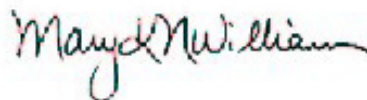
¹⁷ See, e.g., *Lifeline/Link-Up Order* ¶ 42 (“For example, Maine, a state with an aggressive outreach program, which includes coordinating with social service agencies and sending flyers and personal letters to eligible consumers, reports that its penetration rate among low-income households increased from 90.5% in March 1997 to 96.5% in March 2002.”).

CONCLUSION

For the reasons set forth above, TDS Telecom urges the Commission to reject the AT&T and TracFone proposals at this time. At some point it may be appropriate for the Commission to consider measures to encourage more carriers and consumers to take advantage of Lifeline support. But such measures can and should wait until after the Commission has taken steps in the pending proceedings to stabilize the growth of the Universal Service Fund.

Respectfully submitted,

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